Public Housing Repositioning: Wednesday Webinar Series

PHA Developer Roles - 6/30/21

Dan Esterling: So Caila, I think I'm seeing the older version of this, but I'll go ahead and kick it off. So we have quite a few panelists today, including Mike Andrews, who is one of our subcontracts with our Enterprise Community Partners friends. He has quite a bit of development experience. He was the director of development at, at Home Forward, formerly known as Portland Housing Authority.

He's also runs his own consulting firm doing some of this great development work that we're going to be talking about today. He's one of our TA providers. If you've worked on a RAD project, you may have had him as a -- a launch TA provider. And he also, excuse me, he also delivered HUD's intro to repositioning sessions that you may have joined last year. Caila, it looked like the slide went away, but I can keep going.

Caila Prendergast: Yeah. I was just going to pull up the agenda version. Hold on.

Dan Esterling: Sure. No problem. Sure, no problem. And in addition, we have Kathleen Foster who's been in the affordable housing world for 30 years, working on many programs, including RAD, mixed finance development, LITHC syndication, HOPE VI, Choice Neighborhoods; and she also spent some time as the vice president of real estate for the Charlotte Housing Authority, where they developed or acquired roughly 3,000 affordable housing units during her tenure.

And she currently runs her own affordable housing consulting firm as well. So with that, we also have some HUD staff on the phone or on the line. Advance. This, myself, I'm from the Office of Public and Indian Housing. You've heard me before, if you've been on one of these sessions. Lucy Blackburn, who's the director of Choice neighborhoods. Greg Byrne needs no introduction from -- he's -- today is his last day as the transaction division manager for the Office of Recap. Jane Hornstein and Kathy Szybist, both from the Special Applications Center.

So we have a wide variety of backgrounds. And just for the purpose of this presentation, Mike and Kathleen are going to be speaking to you from the perspective of their former positions as housing authority development directors. So rather than their private developer role that they're in now or private developer consultant role they're in now, they're going to be speaking from that previous HUD perspective.

And so why are we here? So we are going to talk about seven or eight of the most important topics that come up when housing authority has engaging in a repositioning action needs to think about when they're potentially working with the developer. So HUD, as experienced in the rule making and the processing, but this is really going to be discussing the strategic decision-making process for working with the developer.

Next slide? Okay. And so just as a background for everybody, we're going to do this in a bit of a round table fashion. So instead of going through a PowerPoint slide by slide, I'm going to ask these questions from the perspective of say a board member or an Executive Director at Housing Authority and Mike and Kathleen are going to be giving the responses like I said, from their perspective as a development director of the Housing Authority. We'll also have the HUD staff chime in with any additional insights that they might have.

So please forgive us, we're technologically limited here. We can't replicate what it would be like in person, but imagine we're doing a round table here. And in addition, we're going to have these slides available as well as a more robust slide deck following the -- when this presentation goes onto the HUD exchange. And then in addition, as Caila mentioned, this was one of the topics that came up from one of the survey responses where folks wanted to hear about working with the developer. So we really do take those into account.

And so with no further ado, let me start with our first question. So imagine I'm the Executive Director of a public Housing authority, and we plan to convert one of our properties to section eight via repositioning. When does the transaction typically require a developer? And what is the role of -- Mike?

Kathleen Foster: Okay. So Dan, I'm going to start with this one in our round table. And let me just say that for a basic repositioning, something like a RAD streamlined conversion, a streamline voluntary conversion, or just a Section 18 demo dispo, you really don't need a developer. So if you're not doing any rehab, you certainly don't need to hire a developer. It's something that you can do. You may want to hire a development consultant and we'll talk about that more a little bit later, but you certainly don't need a full blown developer to be able to manage a conversion where there's really no rehab.

And even if it's a conversion that just has a minor rehab say maybe 15,000 a unit, probably your mod department has handled similar rehabs many times. And again, you likely don't need to hire a third party developer in that context. But as you move towards substantial rehab and maybe to use a four percent tax credits or you move towards the new construction and you might want to use nine percent LITHC.

An experienced developer will be required. You can say that again, required by your housing finance agency. It will be required one of two ways, either it will be required as a threshold qualification or the points assigned to the experience of the developer will be so large as to effectively eliminate you from the competition if you're not an experienced developer. So just be prepared that if you want to do a live tech deal and you've never done one before, you will need to have a partner on that first walk down the LITHC road. And then Mike, you want to talk more about the role of the developer?

Mike Andrews: Yeah. Thanks, Kathleen. So if you're the director at a Housing Authority or at a Housing Authority and you're considering repositioning, you're considering whether or not you should be the developer or hire a developer, understanding the role of the developer is pretty important. So we're going to spend a little bit of time talking about the role of the developer.

At a high level, the developers responsible for everything necessary to carry out the successful repositioning of your project. So in this training, we're really talking about repositioning of existing public housing. So we'll keep everything in that context. So the developers responsible for everything from the idea and that the termination of that idea through the successful operation of the building, once it's on the section eight platform, following the conversion in any rehab and everything in between.

So the next slide we put together talks -- illustrates a little bit of a breakdown of those tasks. Caila, if you could flip to our next slide --

Greg Byrne: You should see it now, Mike.

Mike Andrews: Yeah. I must have a delay. I'm sorry. I'm looking at the WebEx screen and I still see the prior question slide, but that's fine. So the development process slide shows the kind of the fundamentals of the development activities that are necessary organized into these six headings. And so it's a bit of a snapshot of all the activities organized in a way that generally resembles the sequence of activities.

If you're considering repositioning, and if you're considering being a developer, it's really important to make sure that you spend time on the strategic planning step. And this has come up in other trainings that you may have participated in, the strategic planning step is really where you figure out what it is you want to do with your assets, what it is you want to accomplish. How do you want to go about serving low income people with your real estate?

Making decisions like, do I want to keep this building? Do I want to sell this building? Do I want to -- does this building need a substantial rehab or can I get by with something that's lighter? Fundamental strategic decisions are really important and are necessary to make early in that process. Largely those are done by the housing authority, but the housing authority could also use some outside help and that we'll talk about that a little bit.

Resident engagement is generally a next step. Resident engagement is a broad category here that can begin with thinking about how you're going to approach residents and talk to them about what could be a rather disruptive activity in their life all the way through the mechanics of signing new lease documents with them once the conversion is complete and everything in between. This would include writing notices, organizing, and conducting the necessary resident meetings, delivering information to residents that's less served understand what's going to happen in the building that they live in.

It might be that it's a really low impact relocation activity where they stay in place and all that's really happening is their subsidies changing. And then the relocation event is the subsidy change. It might be that they actually have to permanently leave that building. So this could also include then the physical move and organizing that move. It might mean that they're shuffling around inside of the building and to allow for that construction to flow through the building in the way that you've planned. So actually executing the move of residents through the building, during the construction duration are all things that go into resident engagement.

Pre-development activities is a large category here. It's largely anchored by the design process. And so figuring out what is the work that will be done in the building, related to that would be managing the permit process, the entitlement process, that would include hiring other consultants necessary to help with pre-development activities. Typical other consultants would be your geo-tech survey. Often the geo -- mostly the geo-tech and survey work for the owner. Most of the time engineers will work for your architect.

Typical engineers that are needed on a project would include structural, civil, and sometimes mechanical dependent upon what you're doing with the heating and cooling systems in your building. So there's a number of other consultants to hire. Managing the permit process and engaging with your city to make sure that you understand what's necessary to get a permit to start the process, engaging with title. So you get a preliminary title report early and making sure that you understand if there's any easements with a repositioning, this is an important early step to make sure that the proper HUD DOT has been recorded against the property so that you can then have that release at the conversion of that.

So there's a large bundle of activities that relate to pre-development. I'd also put into this category your environmental review. So either your Part 58 or your Part 50 dependent upon what type of conversion tool you're using. And there's a lot of steps that go into that pre-development activity. Two things to flag there to look out for that are the most often trip hazard in the environmental reviews are the historical requirements if there are any. So if your building is old enough, or if it's been historically designated, your historic preservation review is important to get ahead of, and then looking to see if there's any flood zone issues with your property.

Lines can change over time. So if you've got an older historical [speaker breaking up] is not in the designated area, a flood area, but just over time it may find itself in one. So identify that early and flagging that earlier important. So those are all pre-development activities that are necessary to be carried out. It could be by your developer, could it be by the Housing Authority.

The next area is paying for it. So the affordable housing finance and if it's -- if you're doing a no debt conversion where you don't have a lot of rehab dates, there might not be a lot of activity here. It might just be spending some of your own capital on the cost related to the conversion of that. Maybe it's spending a little of your own capital on some minus minor or modest rehab. That continuum then goes up as you have more construction need. And so maybe you're doing a debt only.

Maybe you're doing that with low-income housing tax credits, maybe you're seeking other subsidies that are available from your city or your county or your state. Those are all activities that are organized and carried out by the developer. Once you've assembled all the money and everyone's agreed to share that money with you, you have a closing and that is the typical start of the construction. Construction management activity is an important step in the development process typically carried out by the developer.

Prior to the start of construction there's the pre-construction activities. This is often carried out along with the design process and it's where a lot of problem-solving or other value engineering activities, go into making sure that you can fit your scope of work in your budget, understanding how the work will flow through the building. So you understand how it might impact the residents living in the building and what that means for your necessary relocation plan, what it means for how it residents will move throughout the building.

Once you start construction, there's a nearly day to day, if not week to week responsibility of managing the general contractor and a lot of change management, a lot of problem solving going into the -- what is discovered through the course of construction. Typically the developer's responsible for that and making decisions, authorizing changes, pushing back on the contractor when necessary to say that we don't -- you might want to say to them, hey, we don't think that that's a real change, where you might think you might think that that's something that the contractor should have foreseen. You might think that that's something that it's their responsibility, not the owner's responsibility.

Having negotiated a really solid contract with the contractor is important. Making sure that your schedule values your scope of work, any exceptions in the construction contract, that would be the place that the contractor could say, hey, this is an exception. This wasn't in our base money or our base contract amount. This is something new. This is truly an unforeseen condition. Getting a really solid tight construction contract so that the owner is protected and that the work completed can be done smoothly.

All of those steps have a regulatory thread that runs through them. So the regulatory thread as shown is the last category, but in reality, it touches everything. If you've done these before, you know that there's a lot of rules related to relocation and depending upon which repositioning tool you use, you have -- there's different rules that apply. You then go through your Part 50 or Part 58, you then go through any entitlements or any other permitting activities, lots of rules related to affordable housing finance, depending upon which financing tools you're using.

And then ultimately the conversion, pardon me, the placement service or the starting of operations itself. All of those regulatory rules are things that the developer needs to be aware of. They need to know what those rules are, they need to know who the regulator is and how to engage with that regulator. That regulator is HUD. HUD is one of them. It could be your state, it could be your city. Whomever gives you development subsidy is a level of a regulator. It also likely involves your state prevailing wage office.

So understanding what those rules are and making sure that you've got the right prevailing wage determination established for your project so that you don't have any trouble with being called out for not having the right prevailing wages cooked into your GMT and your construction contract. All of that is the development process. So when we continue to talk about how you -- who does what or what those risks are and how you engage a developer, it's important to establish this basic understanding of what are the things that go into the development process?

From -- I've got an idea that I might want to reposition my building, continuing through all these steps until you end with you successfully completed the rehabilitation. You sign new leases with all of your residents and now the subsidy on the section eight platform is now flowing to the new owner of this building, which could be an incarnation of the Housing Authority and you successfully repositioned. Everything from the idea to the new subsidy flowing is the responsibility of the development -- within the development process. Many of those steps that you look for the developer to do.

Dan Esterling: And hey, Mike, Greg, and Kathleen -- so a good part of remaining portion of this presentation is going to be -- so those are the collective roles of what a developer developmentally does. It's really Kathleen that says, hey, the more complicated deals particularly to go towards tax credits, the more likely the HFA is going to say, I want someone who's got experience; right? So I've got -- and if you don't have experience with PHA, you're going to need to bring in a partner. Then the question is which of those roles will a PHA assume?

Does it turn it all over to a developer? Does it keep some of those tasks in house and who's taking the risk? And so, just to frame that a bit to say, now that we've got a sense of the big picture, what are the collective set of tasks that are in development, then it's a question of where do I, as a PHA, fit in that and whether I have to sort of turn it all over versus when can I do some of that? So I think that's kind of what's going to sort of show up in the next couple of slides.

Kathleen Foster: And I would just add a short thing, which is that there was a reason for us to develop this slide and for Mike to walk you through every single step of it, which is the real question for you as a PHA is, do I have the capacity to take on all these tasks? And to put it in the simplest form, if you don't have the capacity, you're not going to have a successful development. And if it's a tax credit development, you don't really even have an option because the HFA will require it. So you do want to get a partner in that situation. And if like Greensboro and some of the other Housing Authorities that I've worked with, you eventually want to build the [inaudible] to be your own developer.

You want to say that in your RFP in selecting a development partner, that you want to pick somebody who will help to build capacity. And in most cases you probably want to keep control of the property management function, because that's something you're probably already doing. Again, you may need assistance if you're working in a program like LITHC [inaudible]. But in terms of basic property management, that's one thing you may want to continue and do on your own while working with the developer partner on the other aspects of the development.

Luci Ann Blackburn: Kathleen and everyone, this is Luci. Just to add another thought onto that, that even if you do -- if the PHA does hire a developer who will be responsible for all or most -- some aspects of the project, the PHA still really needs to be heavily involved in what's going on with the project in monitoring the developer, making sure the developers moving forward as they're supposed to, because we all know something goes wrong, the PHA is going to be front and center. So even with the experienced developer, be sure the PHA is always part of the discussions and part of the conversation in what's going on with your project.

Mike Andrews: Before we enter this next question, Dan, we need to touch on one of the points that Greg made as a way to expand on that prior development process slide a bit -- maybe Caila could slide back one? And to set up the next conversation. The developer doesn't have to do all of these things. And in my experience, having been at a Housing Authority running into development department, where I did a lot of joint venture projects and I did a lot of self development projects. The joint venture projects were -- had some consistencies, but could be very situational.

So I know Kathleen's experience was a bit different where they had a program and they set up their program and they tried to carry that out and have all their deals look very similar. A lot of the joint ventures that I had done were maybe because they were opportunistic or opportunity driven, we're very different. So my point here is that your relationship with the developer doesn't have to always be the same. You might want to say that you want the developer to do everything you might turn over nearly all of the activities on the slide to your developer.

You might say to the developer, you know what? The things that are important to us are the resident engagement. And we really know this thing. We really know -- maybe there's in house capacity around affordable housing finance, and that's something you're going to keep in house, but you need a developer partner to do the rest of it. So it understanding your internal capacity, in that moment in time, when you're looking to take on this transaction should be a determinant of how you engage with a developer and how you parse these activities.

And so laying out what the comprehensive soup to nuts activities are, and then saying that you don't have to do them all, and you don't have to turn them all over to a partner. There can be combinations of what are engage with the developer to perform.

Dan Esterling: Thank you all. And I think onto the next question, you all sort of talk -- spoke to this issue a little bit, but I'll ask it more directly. So now that we know all of the functions the developer might do, and when one is needed, when should I expect to be able to self develop? I.e., the Housing Authority serves as our own developer and on what projects should I speak a development partner?

Mike Andrews: Yeah. So I'll take this one first, Dan. So I guess the blunt first way to think about it is, do you have capacity? If you don't have the capacity to be the developer, then you should engage with a developer partner. The tasks necessary, the risks, and the underwriting thresholds that you need to get through are such that if you don't have the capacity, you need to find a partner to help you with that.

Now, that said, if you don't have the capacity, that doesn't mean that you shouldn't -- that you should be dissuade from trying to build that capacity. So it might be that you have made a decision as an organization that you want to build the capacity to be the developer. And if you've done that, a couple of points to think about, or to leave you with are that is a big decision.

A Housing Authority becoming its own developer is not a one-off project specific decision. It's an organizational commitment that your organization needs to make. I'd suggest to you that your board needs to be heavily on board with that commitment, your director, your leadership, because it takes the organization to be a successful Housing Authority developer. There's risks that you're going to take on, there's implications on staffing on the number of decisions that your board is going to be asked to make, on what your internal accounting structure needs to be responsible for, and on down the list.

So it is an organizational decision that you need to seriously consider and not think about it as a one-off project decision. If you've made that decision that you want to be the developer and you don't yet have the capacity, the way in which you engage with a developer partner can help you build that capacity. And so going back to thinking about that list we've shown earlier, you might engage with your developer partner and say -- and just have it on the table. You want to build capacity. You want to learn from them. You want to take certain things on so that on this deal, your developer partner, your first deal, they might do a lot of the heavy lifting, but you and your staff are there learning.

And then on the next deal, you can do more. And then on your third deal, you can do even more so that over time you'll be able to then show to whomever is going to ask you what your capacity is that you've got a track record of deals that you've progressively participated in and done certain things successfully. And you can -- you now have that success to show for yourself. So if you don't have the capacity now, you need a developer partner. If you want to build the capacity, make that part of the conversation with your developer partner, so that it becomes part of the way you engage with them. Kathleen, you had some experience in Charlotte. Maybe you want to talk a bit about how you engaged with developers?

Kathleen Foster: Right. So we were in a very unusual situation in that we've been lucky enough to get a number of HOPE VI awards. And we have leveraged that so that we had excess HOPE VI funds that needed to be spent within a very short time frame. And we had a new tap in trust fund. So that's a local resource that you want to check into. And we had two very experienced developers, already within the community with a really strong track record of getting tax credits year after year after year. So one was a nonprofit, one with a for-profit developer.

So rather than compete with them, we decided the best strategy for getting the money out and the units billed as quickly as possible was to partner with them. And that turned into really good strategy in terms of just the volume of production that we were able to generate. And after doing 10 deals with the two of them, we were really in a position to move into self-development on specific projects when we wanted to. And I think Luci's got some examples too. Milwaukee and Tulsa where they made different decisions about self-developing or partnering.

Luci Ann Blackburn: Right. In Milwaukee, and I've worked with them similar to working with Kathleen for many years. Milwaukee had a very large portfolio of big public housing projects and maybe the decision early on that they were going to self-develop and they did self-develop either Six HOPE VI, all their mixed finance projects. So as was mentioned, they made this decision early on, it wasn't going to be a one-time thing. It was for a project that they were going to move forward with and they made the connections over the years with the local consultants, particularly with the Wisconsin Housing Finance Agency.

And they were also listed in that case. So they had good relationships with the city that they would need for developers. And so they started relying somewhat I'm sure on consultants, but over the years they had that capacity to implement all the large multi-phase projects on their own. They had key staff, financing staff, they had construction staff, and it was worth the investment to them.

On the other hand, Tulsa, who I'm now working with on their Choice neighborhoods Project, in the past, they were not interested in development. They maybe had a mod department, but they had a HOPE VI project, they used a developer. But they brought in a new Executive Director and that Executive Director had experience and saw the potential for the agency to move forward with self-development. So after discussions, again, with the board as was pointed out, they saw that as their future direction and they started to move slowly to build up their capacity.

I believe I was told that in three years they went from one person in their development office to 15. So they did that. They partnered with the developer for Choice neighborhoods, but they're in every aspect of it. They're co-developers, they're learning, they have responsibilities. And so now they're starting to do more self-development on their other projects and probably moving to the point where in the future they will be self-developing. So they took time to move to that. And then they see that as a role for themselves in the future.

Greg Byrne: Hey, Luci, I want to add to that -- this is Greg again. One of the PHAs you've worked with named -- we won't mention, but one of their first deals that they did, this is now back 15 or 18 years ago with HOPE VI, that they didn't do tax credits. They didn't really leverage the tax credit and the PHA -- so they did develop it on their own and the PHA today is really thinking of restarting that whole deal, like revisiting it possibly tearing down the property and all that. And that was a function of the PHA.

Really did miss out by not bringing in sufficient development, external expertise to come in, because at the time someone might've said, gee, is this really the right choice to rehab this property? Or should we think now about tearing it down and building a new? Because -- and so that's one of the risks that a PHA does sometimes if they go off on their -- and it's new, particularly for the first time they've never done development before is it makes sense to sort of get in some expertise. If you haven't done this about whether you're going on the right path.

And again, we'll talk more about that in the presentation, whether that's by getting that expertise from a developer or separately hiring a development consultant to work alongside you. But if you haven't done development before, getting appropriate sort of a skillset and experience is huge.

Luci Ann Blackburn: Yeah. Absolutely critical, especially if you do have tax credits, you just can't afford to make a mistake.

Mike Andrews: Yeah. You're not making a mistake. In many states, there's a threshold criteria that you need to demonstrate that your team has capacity and states will define what their capacity threshold is differently, but you need to show that you've got experienced capacity to just to be eligible for the credits. In other states, it becomes one of the competitive criteria. And so having a developer partner can help your cause if you need credits and your Housing Authority doesn't have that experience.

A couple of other considerations that we wanted to leave folks with in thinking about, so we talked a lot about capacity and that's like a baseline fundamental question to ask yourself. Some other things to ask yourself about, like when should you use the developer? Go back to what Kathleen had started with about the type of transaction than it might be.

So the size and complexity is one of the considerations. So if you're doing a no debt, no rehab conversion, you likely don't need a developer, but you can do -- you will be doing some of the repositioning developer tasks in a way that helps build your experience. And you don't necessarily need a developer to do that. It also might be, what moment in time are you looking to take this transaction on?

When I rented a development department at a Housing Authority, we had internal capacity -- we had the ability to take on and complete large successful complicated projects. We also used it on hold for partners a lot, and we did that sometimes because of timing and bandwidth. It might've been that we were fully occupied with other work and we really wanted to move this other project forward in this moment in time, it might've been because there was a pot of money that was only going to be available for another year, year and a half. And we didn't want to lose that opportunity.

It might've been that this opportunity landed in our lap and we didn't want to say no. But in order to say yes, we needed to augment our capacity. So some of that has to do with the moment in time that the development opportunity comes along and whether you've got the bandwidth. Another thing to think about is what I call the mission importance, or how critical is the project or how critical are some of those steps? So going back to the development process, there are certain things that a Housing Authority might not want to turn it over to the developer partner because they are so mission critical or they're very sensitive in your community.

There's could be lots of stakeholders watching. And watching with a sort of keen advocate eye. And that you don't want to turn that over to someone else, but you want to keep that in-house and control it more. So those are some other considerations to think about when you're deciding whether you'll take on a project or what piece of a project do you want to keep for yourself because of your own internal decisions?

Dan Esterling: Just a second, Mike. And I think Greg kind of teed us up for our next question, which is he used the term, what does the developer consultant and how does it relate to what a developer does?

Kathleen Foster: Okay, so a developer consultant typically it's not going to take the risks or provide guarantees that a full on developer would do. Rather you want to think of this person or this entity as people with a specific expertise that can help you get through a specific process. So we talked about earlier that one of the first decisions a PHA has to make is what properties they want to keep and rehab, which they want to demo and build new and which they just want to dispose of and sell to another party.

And if you don't have experience in evaluating real estate developments, it can be really helpful to bring in a consultant to help you make that decision because then once you have made the decision, then you can really do a better job selecting the developer for a specific project. You as a PHA, really want to take the leadership role in developing your overall strategy. And a development consultant can help you do that. So a couple of situations where I would consider a development consultant would be if you're a smaller PHA, say you have an Executive Director and one or two additional staff, you probably do not have the bandwidth to be able even really, to easily get through just a straight up repositioning conversion.

And so you may want to use the developer consultant in that context, or if you're a larger PHA and you have a lot of properties, all of which you need a strategy for, you may want to use the developer consultant to help you decide what's the appropriate strategy for each property. And what's the right timing, which project to go first, second, third so that you really come up with a strategy that can be directly implemented. And then Mike's going to talk a little bit about what development consults resources are available and then how you would go about what are the rules for selecting a developer consultant?

Mike Andrews: Okay. Thanks, Kathleen. So if you're thinking about a development consultant, it's likely because you've got a question that you need answered or problem that you need to solve. And so defining what that is and defining kind of the scope or the breadth of that question, or that problem is an important place to start.

If it's not a large or huge question or huge problem, you could start by talking to your HUD field office and inquiring about some of the technical assistance, which they have available to help Housing Authority with some of these repositioning questions. And so if it's a smaller finite question that you need help with, that's a great place to start. It's a pretty efficient way, a quick way for you to get some expertise to keep you moving.

If your question or problem is bigger than that, bigger than what the the TA resources from HUD can can provide for, then you likely want to hire a development consultant and you can do that through an RFP or an RFQ process and it can bring them on and have them on board to address a larger scope. Typically, this is done early. Typically this is done early in the process where you're figuring out some of the strategy questions, where you're trying to decide what to do with your portfolio or what to do with a project within your portfolio. And it helps you lay out what that whole plan looks like that gets you to your desired end result.

So development consultants can be great on the front end. They can also assist you along the way. And they, as Kathleen had said, typically development consultant, unlike a developer won't take on some of the risks that the developer will take on. They also don't -- so there's a risk/reward dynamic that we'll talk about in a little bit. But a development consultant can certainly help you with tasks so they can -- I often talk about as and helping you with their head in their hands. So they'll help you think through things or they'll help you produce things. They often don't help with the financial underwriting that is necessary by bringing a balance sheet or signing guarantees -- a developer partner typically does that.

Kathleen Foster: So I might add also that there are local consultants that can help with aspects of your development. And then there seems to be a group of national consultants who have expertise in RAD or mixed finance or other types of HUD programs that can help you, but may not know your local situation as well. So you might need to think about what do I really need help with and what type of consultant and what is their experience? What's -- how is that important to what I need?

Luci Ann Blackburn: And I would chime in here, I would say in my experience, I would not spend using an architectural firm as your development consultant. It's so tempting to draw up beautiful designs that you really can't afford. So -- or that everyone gets committed to including residents and then we find they're far outside of the budget. So it is important to do master planning on very large projects that are going to be multiple phased, but please be sure that someone with the financial background is kind of acting as a restraint on plans that could get out of hand and become unaffordable.

And then people usually have questions about, well, what to developer consultants costs? And so they may charge an hourly fee and you can compare that to your -- call your peers in the industry and see how that fee compares with what they paid for developer consultants. Or they may define a scope of work and have a flat fee related to that scope of work or a flat fee with a cap. And there are some consultants, particularly if you've hired them to help you put together a particular project who are willing to wait until the closing to be paid. So it's pretty much up for your negotiation. And it will yield -- you will benefit from talking to your peers about what their relationship with the consultant cost and be sure to check references as always.

Mike Andrews: Yeah. Just a couple of other points to add onto that. Going back to the capacity discussion earlier in Housing Authorities that are interested in growing their capacity. I have seen and been involved in projects where the Housing Authority will have a consultant working for the Housing Authority -- working for the owner, and there's a developer involved. And sometimes Housing Authorities want this approach because they feel like they might not know what they don't know or they might not know what questions to ask. And so they want someone who's looking out for their interest, engaging with them in conversations with the developer.

So this can be a way to make sure that the Housing Authority's interests are well-tended to, and a way to grow the capacity of the Housing Authority. So there's a way to transfer skills and knowledge in that while working on a project so staff internally at the Housing Authority -- so that they build that knowledge and that ability to take on some of these responsibilities themselves. So development consultant can also be involved when there is a developer.

Now those projects are typically large enough that the project budget can support that, but it is definitely a way to kind of cover risks and cover any gaps that might exist in bandwidth or knowledge or capacity with Housing Authority. Related to that, the other point to leave you with here is that even if you've hired a developer, it's important for the Housing Authority to stay engaged, that they're able to talk about risks here in a little bit, but it's really important to pay attention to the project, even if it's things that you've hired the developer to do. And it's the developer's responsibility.

It's likely that your Housing Authority will always be associated with that project in your community. So everyone's going to know what is your project, if something goes sideways, it's your Housing Authority that's going to get the phone call. So knowing enough about how the project is going is really important. And then knowing enough about how the internal schedule budget costs program decisions are going is also important so that you're not surprised, so that you're aware of things as they are occurring in real time.

So even if you hire a developer, you should always think about staying engaged. You never want to be in a place where if something does go sideways on a project, you don't want to have to answer questions. Like why didn't you know about that? Or how did this happen? You want to be able to try to identify things early enough that you can say, hey, we're on it. We know what's happening and we're managing that change.

Stuff comes up on projects all the time and just being able to engage with that change management in real time is super important. So stay engaged with your developer, whether it's with the development consultant or yourself directly, so that you're not surprised after the fact.

Dan Esterling: Here, just wanted to jump in here. We had a couple of questions from the audience, and I think I can address one, but I'll lean on Jane and Greg and Luci for a little help with them. But the first one does HUD have a list of developer consultant PHAs? And for that, I just -- it's not really HUD practice to recommend any outside consultants. I think in that case, I would recommend if the Housing Authority doesn't have any pre-existing relationships, I would speak with their local NORO [ph] partners or their PHAs in their locality, abroad nationally, to find out who they've worked with and what experiences they've had.

And then does HUD have a template for an RFP or RFQ to solicit a developer consultant? Greg, I've seen one of those on the RAD side for potentially, but Jane, Greg, thoughts on that?

Greg Byrne: Yeah, I don't think we've ever produced a sample RFP. I mean, we've asked that a number of times. We've been free -- circulate RFPs that various PHAs have put together that we thought were pretty damn solid. But so I don't think we ever went so far as to say this is a suggested one. It's something that HUD been continued to look at, but without doubt, one of the best things to do is to talk to your other PHAs in the state who were doing development stuff and see if they can share with you what they're using.

Dan Esterling: Yeah. And if it truly -- go ahead, Jane.

Jane Hornstein: Oh, fine, Dan. But -- I'd like to recommend too that you look at -- I know in the state of Illinois and probably in other states too, the state Housing Finance Agency probably posts information about deals they've done, and you can look at those as well to see who's really active in the low-income housing tax credit market. And my guess is if you Google, you could probably find lots of RFPs that are currently out there. I don't know if there'll be good or bad, but it would be one way to look for them.

Dan Esterling: And if you're really stymied, feel to email repositioning@hud.gov and we'll -- we can help you directly. So just in the interest of time here, let's move on to the next question, which is, so if I take on a development partner, how should I think about sharing the risks and rewards? And Mike touched upon the risk and rewards earlier in the presentation, but this is an opportunity to kind of dive deeper into that. Mike?

Mike Andrews: Yeah. Let's flush that out a bit. So a real estate project or reposition project will come with risks. It also comes with benefits and rewards, but there's definitely risks to be aware of and understand what they are, what the exposure is, and how to mitigate them. And so we listed on this slide, some of the key risks to think about -- it's not an exhaustive list, but these are some of the big ones.

So these are things to keep in mind when you're thinking about either self developing, because if you self you would be responsible for all of these things, or if you engage a partner, then the conversation becomes how you're going to parse this risk between your partner and yourself. And there's kind of a logic to thinking about some of these that has to do with whose roles and responsibilities. And it also has a nexus with what the benefits are.

So for example, the first one listed here is construction completion. So this risk is basically the obligation of the developer or the owner to deliver the project that was planned, not withstanding the amount of money that was in your budget. So if you have cost overruns, you still have to deliver the project and there's ways to mitigate that so you can mitigate that with contingencies. You can mitigate that by having a quality general contractor that you know as the proven track record on delivering projects of this type.

So there's definitely ways that you can mitigate that risk, but in the event that you burned through all those mitigations at the end of the day, it will be someone's responsibility to complete that project, not withstanding the overall sources of funding that you originally had. So that's construction completion.

If you ask your developer to be responsible for construction management and for designing and constructing or rehabbing your project, they should take this risk. Whomever has that role, whoever has that responsibility should bear that risk. You should never find yourself in a situation as a Housing Authority where you're being asked to take on a risk, which you don't have the responsibility or the duty to perform.

So you wouldn't want to, as a Housing Authority, say to your developer partner, you manage design and construction, you get a developer fee for that portion of the project, and I'll share that risk with you. That wouldn't be a good deal for the Housing Authority. Conversely, if your developer is just going to be kind of a turnkey developer, they're responsible for helping you get all the way through your CFO, helping you get your rehab completed and done, but they're not going to be in the ownership entity moving forward, and they're not going to have any responsibility for operations, they likely wouldn't want -- and you likely wouldn't want to ask them to take on any operating deficit risk.

So if they're not involved in managing the property, if they're not involved in leasing and collecting rent and containing operating expenses, then they shouldn't have the responsibility for the operating deficit. That should be the entity who has the responsibility of the day-to-day management. So there's this nexus of this relationship between the risks that are inherent in any repositioning real estate project who does the work and who gets the benefit. And the benefit is largely going to be cash benefit, but at the Housing Authority, there's other benefits as well that have to do with mission.

But I always keep in mind about who's being served and things of that nature. But largely you quantify the benefit with dollars. And so there's this relationship between risk and rewards. This is important to keep in mind and keep these in mind early. And so when you're negotiating your -- when you're thinking about an RFP, that's the time to start thinking about, well, what risks are we as a Housing Authority interested in and able to take on ourselves and what are we wanting to ask our developer to be responsible for?

So that's the time to think about your appetite or your willingness to bear some of these risks? And that becomes part of your conversation in selecting, seeking and selecting, and then signing up under contract a developer partner. A couple other of these, maybe just to touch on it real quick. Some of the other risks here are the tax credit delivery. And this has to do with lease up of your property or releasing your property and making sure that you deliver the credits that are responsible, that are expected by your developer, but pardon me by your investor, your construction loan guaranteed.

So your lender is kind of look to have someone with sufficient net worth and liquidity sign up for these -- in these loan documents. And so as a Housing Authority, you may not have that cash. As a Housing Authority, you're always thinking about where's my restricted money? What's my section nine money? What's my section eight money? What is my money that's not touched by HUD rules? And what's your liquidity, your cash on hand? What's your net worth? What are your contingent liabilities? Those are the types of things that an investor or a lender are going to ask and if you don't have that financial bandwidth, a developer can often bring that.

And then repurchase obligation is kind of a cliff event for an equity investor that if a developer doesn't or owner doesn't do certain things that are expected or required of the investor a repurchase obligation is kind of like what it sounds that you're repurchasing from your investor, all of those credits for what money they had previously given you. That's a pretty big cliff event and there's often attention paid to that to make sure you stay away from that cliff.

Dan Esterling: Thanks, Mike. I'll move on, which is a little bit -- kind of a visual representation of what we're just talking.

Mike Andrews: Yeah. And so this just lays out those dynamics between the Housing Authority and the developer. It goes back to this delineation of rules we had talked about. So what are all of the services or the activities necessary to carry out a project? And we talked about that during the development process slide. And what is the Housing Authority going to do? What's the developer going to do? What is there some overlap on? And then where do they -- where do each of those entities land of this risk continuum? Where do they land on the benefit continuum?

So there's a relationship between the roles, the rewards, the risks, and how those things all come together in a project. Understanding that and understanding the context of your -- the transaction in front of you is very important.

Dan Esterling: Okay. And this goes kind of to the question from the audience, but are there HUD rules for selecting a developer?

Luci Ann Blackburn: Well, if you're selecting a developer and you're using federal funds as part of your redevelopment, if you were doing mixed finance or using your capital funds prior to a RAD conversion, yes, you would have to follow the federal procurement requirements in 2CFR part 200 for selecting a developer either via an RFP or an RFQ, which I think we're going to go over. But particularly if you were to say using your capital funds to follow the regulations and the capital fund rule in section 905. And for those of you who are familiar with mixed finance development, HOPE VI or Choice neighborhoods, again, there are special rules for procurement of a developer in the capital fund rule in section 905.

One of the advantages in say mixed finance or to select in a developer before conversion is that once you select your developer, you no longer have to follow -- your developer doesn't have to follow the federal procurement requirements. So that's a plus right there, but once the project is actually converted under RAD, then those federal procurement requirements would no longer apply. So that's sort of the short the nuts and bolts of the procurement.

Jane Hornstein: Right. And so one thing that's really important to remember though, that there may not be that federal rules that apply for your developer selection. For example, if you're doing grad and you're using federal funds before closing, or you do Section 18 or section 22, but you need to remember that even if there aren't federal procurement rules, there are undoubtedly state procurement rules. So you need to be sure that you were familiar with your state group procurement rules and that your attorney is familiar with those state procurement because they may apply some procedures that you have to follow that are taught in the federal rules.

And also as a PHA, you probably have your own procurement policy. So your board will not be happy if you do a procurement that doesn't even follow your own procurement policy. So you'll want to make sure that you're familiar with that as well, but you certainly can propose changes to your own procurement policy, but just be aware that it's not only a federal rules, there are also state rules and the PHA loan procurement policy.

Mike Andrews: So if you're thinking about the selection process and using an RFP or an RFQ, one of the things that you also want to think about is what is the basis that you're going to use to -- for a competition or for the evaluation or the scoring of those proposals to you? If you're using an RFP because you have reasons to want to have people propose a very specific project, you're likely going to have scoring that relates to the merits of the proposed project. So you're going to see and your scoring should use in your scoring criteria or allocate points that relate to how well the proposal measures up against any goals or any expectations that you identified in your RFP.

So there's going to be a lot of very specific projects. If you're doing an RFP and you've got a project, it also might talk about how much fee they're going to get, or what risks they're willing to take on. So some of the things that you're talking about earlier, you can weave into an RFP scoring criteria. In an RFP, you'd also want to include things like experience capacity, things that reflect their likelihood of success working with you on the project or types of projects that you're going to engage with them on.

You might also want to consider points related to kind of what I'll call the mission category of things. And so this could be things like their commitment on past projects to projects that are heavy mission or their experience with things like section three or minority emerging women small businesses, or their commitment to using or achieving a certain percentage of contracts on your project that utilize MW, ESP types of businesses. So those are the types of things that you can put points to and evaluate your developer against.

If you're using an RFQ, likely you're going to use a lot of those same scoring factors, just not the project specific scoring factors. So if it's a qualification based selection, you'll want to score them on their qualifications, their experience, the team that they're actually proposing to work with you, maybe not the company at large might be a very large company that might have a national footprint. But you'd really want to understand who's going to work with you. You know, on one hand, you're working with the company, but on the other hand, you're going to call a person at that company and that's going to be your point of contact. So what's that person or what's that team's experience with your particular project? So drill down a little bit, when you're thinking about the evaluation. It's a little bit more common for RFQs to be used than RFPs on these types of projects. And so know that as well.

Dan Esterling: Hey, Mike --

Kathleen Foster: I think we can move to the next slide because I think that [inaudible] Mike, you were really on that next slide. There we go. Okay. So just want to point out that technically the difference between RFP and RFQ, what Mike said is absolutely correct, but the technical difference in the HUD rules would be that the request for proposal needs to request a price, or there's a scope of work and you need to request a price. And a request for qualifications price doesn't need to be requested or used as an evaluation factor.

So those would apply if you're under the -- if you're operating under the federal rule. Remember there are going to be lots of situations where you aren't operating under the federal rules, and it may be that you could structure this request as sort of a combination of an RFP and RFQ. I would agree with Mike that the RFQ is the most common approach for conversion development these days.

And that many times PHAs will use an RFQ to qualify a group of developers. And then once they have that group sort of pre-qualified, then they'll select a particular developer based on the characteristics of a specific project. Is this a rehab? And this developer has lots of experience in place rehab? Which is sort of a very special person, very special abilities to work with residents or construction, etc.

So one of the beauties of RFQs, I think if that will really, whether you technically make it an RFQ or RFP is to be extremely specific. That's kind of what Mike was saying. If you have MWDE requirements that you want to make, put it in the RFQ. If you have section three requirements that you want to make sure are complied with, put it in the RFQ. If you want to be the property manager, put it in the RFQ. If you want them to provide the guarantees, all of them, put that in the RFQ.

So you really want to -- you need to have a strategy for the project, and then you want to make sure that there are no surprises from the developer's perspective that you've said what business terms are important to you in the RFQ. And so it should be that only developers who are willing to comply with those will respond to your solicitation. So better sense you have of what you want to do with the property and the more specific you can be about that, the more you'll get proposals in which you're really able to compare apples to apples and kind of make the best decision for that particular development.

There's a situation where people kind of tend to use RFP and which is when maybe when they have really what is a market rate site. And they're just not sure about what they should do with it. And sometimes people will put an RFP out just to kind of get an idea of get some ideas from the development community about what they might pursue.

Greg Byrne: Hey, Kathleen, just really emphasize the point that if you're doing public housing, mixed finance, or Choice neighbors, you're following public housing procurement rules. But once you go through RAD to RAD doesn't establish any set procurement rules. You don't have to follow public housing procurement and you're subject to whatever your state and local requirements that may be imposing. It may not be any. Just make sure that whatever practices, you follow that you have some board adopted standard that says here's what we're going to use for non-public housing procurement.

And the same thing with Section 18. If you -- once you get approved for Section 18 demolition disposition, and you decide after the demolition is mission that you're going to -- that you say you're temporarily turn it over to your nonprofit, and then you're going to look for a development partner, knowing from HUD gets involved in how you procure that development partner, it's left the public housing program. So make sure you follow if there's any rules that are local, but make sure at that moment you're really doing good business practices.

Mike Andrews: One point on that -- Greg's last point that relates to timing. And so Greg said, if you've gone through the Section 18 process and you've disposed of the project, and it's now owned by a separate legal entity, that wouldn't trigger the HUD rules if you're not spending your section nine money on it, that wouldn't trigger the HUD rules. But if you've done that, you may very well be pretty far down your development process path. If you've got an approved disposition and you've carried out the disposition, you're pretty deep into your project.

And so bringing a developer in at that point means that you're inviting the developer into a project that's pretty well baked. And doing that might be fine, but you also might find the developer step in and says, oh geez. I wish I would have been involved earlier because I'd really like to see things done this way or it's in our collective best interest to do it this way. Did you think about that? So think -- pardon me, think about timing here as well. So there's this kind of trade off between the rules that you're going to be held to if you do it early, but there's some benefits of bringing them in early because you get the benefit of your developers experience by having them involved early, to help you think through what's the best way to do this?

And the best way to do the project might be a shared thing between the developer and the Housing Authority. There might be a few things that I don't want to go to as far as say that you're at odds with each other, but there's some tension there about shifting of risk or shifting of schedule or do you sacrifice a little bit of schedule in the emphasis or in the interest of making things easier on residents or do you -- so there's some tensions there that the Housing Authority and the developer might want to negotiate.

But bringing the developer in earlier can help. Bringing them in later is not necessarily wrong, but there's trade-offs between the procurement rules that apply and when they step into your project and how big that project is.

Dan Esterling: Thanks Caila. So what are some of the decision points when negotiating development agreements with development partners?

Luci Ann Blackburn: So on developing a master developer agreement, this is agreements between the PHA and the developer that really stepped out all the major agreements related to the project between the two parties. And I think it's important that this is a document that covers all the major points upfront. So there's no question later on about who does what, who is compensated for what, what approvals are needed, what the liabilities are. What are the penalties for non-performance and even under what circumstances a development agreement should be terminated.

So that's comprehensive document, that should be done upfront once the developer is selected and it should be done so that there are no questions later on, or no one is moving forward without a clear picture of their responsibilities. Sometimes it's a push and pull between the parties and sometimes it can take a long time. In Choice neighborhoods, we now require a development agreement to be in place prior to or within 60 days of the award being made, which would be way in advance of when the development would start.

This way you don't move forward on a piecemeal basis. And the PHA is not having to give in at the last moment to a developer demand just to keep the project moving and not slow things down. So the elements might be who's responsible for pre-development? Demolition, infrastructure, financing, relocation, all the items I think we've already been discussing -- development agreement is the place where you lay out all these key elements and who's doing them. And where the PHA makes clear what its role is, what it has to approve before the developer can move forward, what the developer has to report on. And what the monitoring will be of the project.

We have had projects seriously delayed because of a lack of agreement on any of the points, including particularly the developer fee and what it will be in how it will be shared. If PHA needs assistance from legal or other consultants, it's good to get that assistance upfront when negotiating an agreement.

Kathleen Foster: Okay. I would totally agree that the master developer agreements are really important, particularly for large phase projects, which would be like the Choice neighborhood projects, like the old HOPE VI projects. But I also have seen them take an incredibly long period of time to negotiate. Meanwhile, no one's applying for tax credits and that project's not moving forward. So I would say, this is just an area where Luci and I probably have a different perspective. I would say that with a specific -- what you're doing -- your procurement for is for a specific project? I would use or if you think you might use a different developer for each segment of a project. I sort of lean towards project specific developer agreements because I think once people are to the point where they understand how the financing is going to go, it's easier to negotiate some of the business points because everybody has better and more equal information.

But again, on a phase project, it may well and where you know you're going to stick with the same developer or at least that's your intention. Then if the master developer agreement probably makes more sense. And as Luci was saying, I would say the very first thing you want to do when talking about decision points is you want to -- and getting a development agreement is to hire an attorney with experience in that type of transaction.

So a general real estate attorney will be fine for title work, for private agreements, and local law opinions, but you really need someone with extensive experience if what you're going to do is RAD, or Section 18 rebuild, a LITHC deal, FHA financing, you don't want your attorney to be learning on your bill. So you really want to make sure you pick somebody with a lot of experience and you also want to check references, be sure to call your peer agencies and see how satisfied they were with their legal representation.

And then in terms of the agreement itself, I would just recall Mike's expression of the risks and rewards. I would agree with Luci that the biggest issue tends to be fees. And so it's important that you as Housing Authority, you have a realistic expectation about fees and your fees are -- should be directly related to the amount of risks you're taking in the deal.

And also, please be sure you understand what the limitations are of each of the programs on development fees and in the full deck that we'll distribute later on this week or early next week, there's a separate slide that gives you the appropriate citations for all the different regulations that the different programs have on a developer fee. So it's good to come to that negotiating table with a clear understanding of what fees are going to be allowed, and then a realistic expectation of how much you're going to get based on the level of risks you're willing to take.

Also key is being sure to include what you want the role of the PHA to be in project management. And then to be sure, always, that you keep the land lease and that you asked for a right of first refusal from my standpoint.

Greg Byrne: Hey, Kathleen and Luci, Greg again. I wonder whether there is sort of a difficulty in getting to some agreement with the developer negotiating yet, whether it's the amount of homework a PHA does early on, on pre-routed strategy, what am I doing with this project? And what is the role that I'm going to play versus developer and making that as clear as possible by the time you do the solicitation should then expedite things down the road. Do you know what you want to do? You know what the role you're looking for the developer? So it should be less room for sort of doubt or negotiation.

But I also wonder if not withstanding all the wonderful work that's been done by PHAs and development partners in the mixed finance program over the years with the HOPE VI program, it's also true though that for any repositioning where you're converting the section eight, the financing is simpler, right? That your developers and all that aren't -- don't have to learn about the public housing operating fund program and how that's going to contribute to the transaction. And what part of the -- how much of the operating fund slog is this project going to get? No. It's all based on section eight contract routes. And I bet that that's also helps simplify things and expedites the various negotiations because the least the development community better understands the model.

Mike Andrews: I think Greg, that you make a good claim. I think that there's a section eight platform is currently well understood by the development community, by lenders, investors. So they don't have to try to understand something that is less common. And so that certainly helps. And I think identifying what you want in your RFP, or even before you publish the RFP is really important -- or RFQ. I mean, you could also identify what your project is in the RFQ that you're asking someone to propose their qualifications on.

And if you have these must haves, and Kathleen was saying this before, if you know that you're going to be the operator, or if you know that you -- whatever your must have is about this project, if you have one, say it. Be clear about it, and if it's about you must get a share of the developer fee, say that. If it's that you must take care of this input -- this fix in the building. If it's -- you must have a green roof, or you must complete this structural improvement or whatever it might be, whatever you know that you've got, be clear about that early, so that you make those negotiations of your development agreement go a bit smoother.

There's also a point I want to reemphasize the importance of paying attention to your project the whole way through and understanding how these agreements behave with each other. If you do a RAD or Section 18 that tax credit project, there's going to be a lot of agreements and it's important to understand how they all work together. So follow the agreements and follow the money, understand who has what exposure and understand what exposure you have. So do you think that you're going to get 20 percent of the developers fee? Make sure that you've followed that all the way through the documents and you're aware of whether your share of the fee has been put at risk by anyone.

You may want to do that, and that might be a fair thing to agree to. You might say to your developer partner, hey, it's only your 80 percent of the fee that's at risk. My fee gets paid no matter what. So knowing that all of the agreements that look at signs say what you think is your role in the deal. And then what you're going to get is really important.

This goes to Kathleen's point about having a good lawyer involved. It also -- there's a bit of the business side of the deal, as much as the legal side of the deal that you really need to understand about how all of these pieces go together. It involves budgets, schedules, program, risk, how all of those pieces fit together and the reposition is a piece of that, but your tax credit investors agreements, your state tax credit agreements, your bond or debt documents will all have threads of this running through them.

Mike Andrews: Okay. I know resonant relocation, you touched upon it a little bit earlier and it's at the top 10, but can you speak to the role of developer partner and relocation?

Luci Ann Blackburn: So obviously it's really a critical item. It's the first thing in my experience when you raise the redevelopment to residents, it's the first thing they want to know is when I'm going to be moved. So it's very critical and it can take a long time to happen, not only you're required to follow the appropriate rules for relocation, and also depends on whether you have anywhere to move your residents to, and in [speaker breaking up], that can be a problem and can definitely slow down the project.

In my experience, we have had projects where the PHA is entirely responsible for relocation. And oftentimes that works best because the PHA, they know their residents, they know their location. They know probably who the other partners are out there that can help, they know where landlords are, and that generally has worked very well, but we have had times where developers are responsible for the relocation. But that generally is with developers who have an arm of their business that deals with relocation or deals with resident services. The Michael's company -- the nationwide developer has an arm of their agency that works with residents.

We have others McCormack Baron Salazar that has a very, well-known now nationwide arm of their business that deals with resident services. There are also developers who will hire themselves relocation specialists, and there are consultants out there that focus on relocation -- federal relocation requirements, or just relocation in general and those support well also. So it probably depends on whether PHA is really familiar and has done relocation before, who your developer is, and then who do you feel comfortable if neither have in-house experience actual partner with the consultant?

And I think with my experience, PHAs have done a really good job on relocation, at least for my projects, but it can take time and you need to start early and often reach out often to residents and keep them informed of what's going on so that there are no surprises and nothing that will spoil your redevelopment.

Mike Andrews: Yeah. I'd like to echo what Luci said about the Housing Authorities wanting to stay involved with residents. That doesn't necessarily mean that you shouldn't rely upon your developer or maybe even bring in a relocation specific consultant, but the engagement with residents or one of the areas of a project where the probability is getting a lot of energy focused on the Housing Authority is great.

And if residents are concerned or getting organized and that can have a big impact on your development. So staying involved with your residents is pretty key. At the end of the day, even if you've hired a developer, the Housing Authority is still the landlord. So you've got the lease agreement with your resident and you're telling the resident that you're going to make a change in the building they live in. And so you've got this responsibility, whether you -- that's the developer to perform relocation tasks or not.

So staying close to the residents, don't leave any communication voids. If you leave a void, the communication is going to get filled with a narrative that might not be your narrative. So make sure that you're giving them good information and staying involved. And if you need to bring in people with -- to actually execute the move or to write the notice, that's a good approach. But I'd encourage you to stay close to your residents because it's such an important piece of the success of a project.

Luci Ann Blackburn: Hey, [inaudible], I would just add that keep in touch with your residents, not just up until you move them, but throughout, because hopefully they're coming back and to be successful as when they're moved and be able to come back to your new development successfully.

Kathleen Foster: Great. And if the PHA does decide that they want to do the relocation themselves, make sure that that your relocation department understands that URA relocation and/or RAD, URA relocation are not the same as what the PHA typically does when residents are moved from one public housing complex to the next. So they really need to have an in-depth knowledge of the rules, which for RAD limits their housing relocation notice, Section 18 and section 22 have their own relocation provisions that are similar to, but not identical to the Uniform Relocation Act.

So if you do have a relocation department and you want to use them for your relocation for a big development, there are lots of reasons why that's a good idea. Just make sure that your people who are in charge of that relocation understand that their rules are very different from the normal rules for moving residents from one public housing complex to the next.

Mike Andrews: One last point that relates to the risks and benefit and residents, Luci had brought up return and return might mean physically moving back into the building. Return may also mean something like you just signing a new lease with a resident who's in their unit. The act of a resident moved back into a unit or signing a new lease on a tax credit project is a very important step. And it goes to the promises that will be made to your investor around credit delivery, which goes to then whether the investor is going to pay you all the equity that they had signed up for them.

So if the Housing Authority is going to take on the relocation and the return, the lease up of the building and the credit delivery is a really important thing to focus on. So you want to make sure that what you're thinking about for refilling that building is consistent with what the investors been promised for the building being leased up. If those two things are -- if those two things don't align, there's a financial exposure that might come back to the Housing Authority. So it's really important to make sure that your resident return, your lease up, your credit delivery, and who's responsible for any credit adjusters are all aligned.

Luci Ann Blackburn: Yes.

Kathy Szybist: I would add --

Luci Ann Blackburn: Oh, go ahead.

Kathy Szybist: Just real quickly. This is Kathy Szybist. I just wanted to quickly chime into what resident relocation can mean. It can -- under Section 18 and 22, it often means an initial offer of some form of comparable housing, which could include things like an existing -- even offering families the existing -- their existing public housing unit. And then it is the PHA's responsibility to usually take on that role -- the initial comparable housing.

And they can't even complete the disposition until they make that offer and complete relocation for Section 18 and 22 purposes. And then later on, after those units are moved, maybe to a Section 18 platform, or are in the process of getting those to a Section 18 platform, there could be negotiations with having the developer do physical relocation or something like that.

Luci Ann Blackburn: And then I would just add from a lesson that we learned in Charlotte, that you'd think was incredibly obvious, but we didn't focus on it on the first couple of HOPE VI relocations, which is whoever does that relocation, be sure that you, as the PHA are in contact with the school system and with social service providers and any other educational partners so that they are not surprised when the time comes to actually move one of their clients.

So really important for consistent service delivery to residents than for kids in schools that you've done some planning with the school district and social service providers, regardless of whether you're actually going to do the relocation or you're going to hire somebody, or the developer's going to do it. You're the one with the contacts in the can.

Mike Andrews: Hey, I just want to jump to -- we've got a good question from the audience before we jump to any other issues -- you can move on to eight, Caila. And I'll summarize the question and I think everyone on the panel here can really address this, but so when a PHA is working with the developer that isn't working within the confines of the master development agreement, what can the PHA do to sort of bring them back in line or bring in another developer?

And I guess I'm assuming this question means that they're not only the developer, but they're also the management agent at the house -- at the property. So what are the remedies for a PHA for a non-performing development agent developer and what is HUD's role in helping the PHA with that issue?

Luci Ann Blackburn: Well, I can speak just from experience to that. If things have reached the point where you simply -- the developer's not performing and it's clear they're not performing. And there's no road forward, there should be a determined way in advance, hopefully, to terminate the developer. And to part ways, hopefully amicably and then for the PHA to reach out with another RFP or RFQ, if necessary and procure another developer.

So that would be the worst possible solution probably, but the way to handle it. And as far as HUD's involvement, I think it would depend on the program in Choice neighborhoods, you would need approval to do that. But if it was -- if the project had converted under RAD, I'm not sure what the roles RAD office would be in that particular position, but you would want to be sure that the expertise of the old developer was replaced similarly with the expertise of the new developer.

Kathleen Foster: Yeah. I would -- it may be too late in that specific example, but I would say -- I would just repeat the advice I got on my very first development deal coming out of college and that was follow the money. So developers develop partly because of mission, but also because they want and need to make money, to be able to pay their staff, etc. So as you're setting up a developer agreement, be sure you create deadlines by which certain things have to be done and base the payment of that percentage of the fee contingent on that deadline or that particular set of actions being done.

So that's the easiest way to resolve those disputes typically, but you need to have a little bit of advanced planning just to see in the future and anticipate that those kinds of issues might happen. If the relationship has really fallen apart, then I'm not sure that -- and you haven't set up any milestones that relate to payment. Then there may not be a way to resolve it amicably and you may be doing what Luci described, which is dissolving that relationship and preparing somebody new.

Mike Andrews: Yeah. And I guess I'll put my HUD hat back on to respond to what it's HUD's role. I mean, to the extent that this is impacting the management of the property, HUD's going to look at the Housing Authority. They're going to turn to the Housing Authority or H2S deficiencies and things like that at the property. So it really is incumbent upon the Housing Authority and the developer to work through this.

Greg Byrne: Yeah. Just add to that, that really Kathleen's comment, follow the money, is this notion of follow the agreements. And so it's within the agreements that everyone's expectations will be defined and what their obligations are. And if they're in what default looks like and what ways to cure default are. HUD's contracts are going to be with the Housing Authority. You have some mixed finance deal, it's going to be largely with the Housing Authority. If it's -- there'll be declaration of trust with the land -- but the agreements that are actionable are largely with the Housing Authority.

And then the Housing Authority will have agreements with the developer or the ownership entity. So you need to look to those agreements to see what rights does the Housing Authority have to enforce whatever the issue is. So depending on exactly what the nature of the issue is, you need to look for the right agreement. So is that an HQS issue? Is it not collecting rent? Is it -- what is the right -- what's the problem exactly? See where that lives in your agreements and see what you can do about enforcing that.

Dan Esterling: Okay. So then I guess we're going to sort of a more free session in the remaining few minutes here and see if we have any questions from the audience, but is there anything Mike, Kathleen, Kathy, Greg, Jane, Luci, that you wanted to touch upon that we didn't get through in the formal presentation?

Kathleen Foster: Yeah. I made myself a list of three things. First, in working with the developer partner, come from a position of strength. Educate yourself, know the key business points, and where you can be flexible. Use the development consultant if needed. Number two is understand what the developer needs. They need information, they need prompt payments, they need smooth processing as construction draws. They need timely decisions when plans change. And then the third is that the relationship with the developer needs to be open and transparent.

Don't try to hide key information because you feel like that will improve your negotiating position. Share the RAD resource staff, have them join in on that call. Make sure everyone understands things that impact the schedule. Don't fall back on saying, oh, we'd like to do that. But HUD says we can't, if you haven't really explored all the options. So really, if you're going to have a development partner, make them your partner and keep the relationship open and hopefully build trust based on that relationship. So those were my takeaways.

Luci Ann Blackburn: I would agree absolutely with what Kathleen said that I would always focus on this being a partnership between you, the developer, and HUD, to an extent, and everyone working together well. But I'd also encourage PHAs to don't just sit back and let your developer and your consultants run your project. Be an active participant, no matter what your ultimate role is, be a participant, be conscious of what's going on and making sure that the project is moving forward in the way that you want it to move forward, because it is your project. It is your residence. And in the end, it's ultimately your -- the face of your Housing Authority.

Mike Andrews: And I agree with all those points, one thing to add -- two things to add about picking a developer partner. This is going to be a partner that you're going to be with for a long time. And that best case scenario, your project goes wonderfully and there's no issues. And it moves to a successful outcome. There's also -- we know from experience even very experienced teams will have projects that run into problems. If you experience a problem, what's your partner going to be like to solve that problem with?

And do you feel like you've got a partner that has kind of an agreement in principle and it has shared principles and shared values and approaches the project in the same way, that they understand what's important to the Housing Authority. You understand what's important to that. And it is someone who you feel like that you can problem solve with, if things go sideways. So ask yourself those questions. What's this partner going to be like to work with when you're choosing them?

With respect to being your own developers, so if you're thinking about self-developing, don't -- that is a big decision. So I want to go back to that point that was made earlier. There's a lot of great Housing Authorities around the country that are self-developers, and there's a lot of great Housing Authorities that aren't self-developers, but still do great work. So you don't necessarily need to be a developer to do good work serving low-income people through your real estate.

You can do pieces of it. You can rely upon external partners. So figure out what's right for you. And it needs to be part of a bigger organizational strategy. It shouldn't be about a particular project and maybe even shouldn't be about just repositioning. If you're going to invest in the apparatus of being a developer, there's a lot of fixed transaction costs or organizational costs that go into that. And so what is your development agenda even beyond repositioning? So think about that as you think about, is this the right thing for us to invest in?

Caila Prendergast: Okay. Thanks everybody. Dan, if it's okay, I think there's a few questions from the audience that we can hit on.

Dan Esterling: Yeah. Go for it.

Caila Prendergast: Okay. Great. So sort of similar to the question earlier about templates, had a question -- had two questions come in actually about if there's a sample master developer agreement or agreement templates, or if not, provided by HUD, if you have any suggestions about where you could find one?

Luci Ann Blackburn: Our office does not have a template, but we encourage again to have PHAs reach out to other PHAs that have done similar development. And I'm sure they're more than happy to share, or they may just be posted -- it should be posted on a website, but reach out and I'm sure that others would share.

Caila Prendergast: Okay. Thanks Luci. So next question, can a PHA work from a pre-qualified pool of developers?

Luci Ann Blackburn: I've seen that happen in projects in HOPE VI or the Choice neighborhoods projects. There has been a pre-qualified group of developers that could be selected on for various phases or aspects of a project. I don't want to speak for the RAD folks, but that would be acceptable to our programs.

Dan Esterling: Yeah. So again, remembering RAD, we don't establish any procurement rules per se. So the PHA field coming up with a pre-qualified list is the approach they want to take. They feel that's appropriate, but it's perfectly acceptable with us.

Caila Prendergast: All right. So next question is also from the RAD office, but others can chime in. If your RAD conversion generates a profit for the Housing Authority, what can be done with those funds?

Greg Byrne: Long as it meets -- as long as you spend in accordance with whatever your mission is. So developer fee and cashflow is not governed -- is not restricted in any way through any RAD conversion. So it's only whatever requirements might be imposed locally upon you as a PHA. Mostly just use it to support your mission.

Caila Prendergast: Okay, thanks, Greg. I got a few questions about if this session is being recorded. It is being recorded and will be posted on HUD exchange in the coming weeks. And also as Dan mentioned early on, they'll be an accompanying sort of larger PowerPoint that'll go out to all attendees with more detailed information when that recording is posted as well and will be shared via email to everyone who attended with everyone who attended it.

And I'm not seeing any more questions in the chat. So last call, remember, you can either type your question in the chat box or raise your hand to ask it verbally. It looks like we have one hand raised. So Charlene, I am going to unmute your line for you to ask your question, Charlene?

Charlene: Yes. Can you hear me?

Caila Prendergast: Yes.

Charlene: Oh, okay. My question, I wanted to tell you this was so -- you need a part two of this webinar and even -- I'm willing to pay for it, like $79 or $200, because this was so helpful, especially I am a commissioner and a lot of things you don't know until you get on about the developers and all of that, especially the procurement part of it. Like for instance, if a procurement had a negotiation with the old CEO and when the new CEO came, something went -- was differently and the contract is totally terminated.

And the vendor still wants to pursue it. And -- but it's been terminated and it seems like it's been terminated correctly. It's just that, it's the appearance of it didn't seem correct. So how do the PH or the commissioners even think about that type to avoid it? Thank you.

Caila Prendergast: Any thoughts on that?

Greg Byrne: I may need that question repeated.

Charlene: But not -- I'm not going to repeat everything because it's kind of lengthy what I was saying and time is of the essence. But what are the main point is if a contract is -- seems like honored with the old CEO, but when the new CEO takes place and there's -- and the CEO terminates the contract due to further investigation of the contract, but the vendor seems to have the appearance. I mean, the vendor seems to have the impression that it was an unfavorably terminated.

Greg Byrne: Hey, Dan -- why don't you try to answer this Greg? So contracts don't expire or just run with an Executive Director; right? So that's why boards when they approve contracts or when they give procurement authority to Executive Directors, the director leaves that contract's still binding. So sometimes a board may feel like there's a need for a change in leadership or maybe a PHA director leaves. But whatever that director leaves behind, you still have to honor.

So if you're in a situation where you're a board now, and you've got a contract and you were somehow thought that maybe you'd be able to terminate that contract with whatever developer partner you have, really to have a close conversation with your attorney and very likely rope in your field office for some advice, because that's a pretty dicey area.

Caila Prendergast: Okay. Thanks, Greg. So back to the earlier question about profits from a RAD project, can they be reinvested into more Housing Authority staff to increase staff capacity to aid in continuing further RAD projects?

Greg Byrne: Absolutely. You can -- if that's what your board decides that they want to do and it's appropriate to -- that wage rates aren't competitive for what you're paying your staff or that you're not -- you want to provide bonuses that are sort of in keeping with prevailing practices in the community, without go. So board -- you always have to make sure that your stuff is reasonable, but, yeah, whatever -- if you can meet your mission and it's reasonable, then it's permissible.

Caila Prendergast: Okay, thanks. So the next one, you mentioned that after procuring a developer partner, the developer does not have to utilize procurement protocols moving forward for contractors and such. If the PHA is serving as the developer, will they still have to utilize procurement protocols for contractors, etc?

Luci Ann Blackburn: Yes. You will.

Greg Byrne: And that's -- as Luci is defining it that -- yeah, if you're doing mixed finance public housing, but it's a different issue if you're doing repositioning through RAD or Section 18. But without doubt, if a PHA had its own self developer under mixed finance project, it still has to follow procurement rules when it select subcontractors and stuff like that.

Caila Prendergast: Okay, thanks. Luci, we also got a question about -- I think at one point you mentioned a few sort of bigger name developers and got a question about if you're able to repeat those to the audience?

Luci Ann Blackburn: Yes. Yes. I'm not repeating them as an advertisement, but using them as example was the Michael's organization. And McCormack Baron Salazar in reference, I was seeing them in terms of them having a resident focus within their organization.

Caila Prendergast: Okay. Thanks, Luci. So that's the last question I'm seeing. Let me just scroll down one more time and make sure no one has their hand up. Okay. I think that's everything. So I just want to remind everyone to do the survey when it pops up, and I'll pass it over to Dan for some closing remarks.

Dan Esterling: Thanks, Caila. Thanks to all our presenters. It's great job, and I hope that everybody in the audience got something out of this. And again, please fill out your survey and let us know what else you'd like to hear. We don't have any webinars on the agenda for the coming months, but I'm sure we'll get something posted to the HUD exchange soon. Thanks so much.

(END)